

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DEBRA BEY,

Plaintiff,

v.

**Case No.: 2:16-CV-1167
JUDGE SMITH
Magistrate Judge Jolson**

WALKERHEALTHCAREIT, LLC, *et al.*,

Defendants.

OPINION AND ORDER

This matter is before the Court on the Motion to Dismiss of WalkerHealthCareIT, LLC, WalkerSearchGroup, LLC, Tiffany Walker, and Gregory Walker (collectively, “Walker Defendants”) (Doc. 14) and the Motion to Dismiss of Encore Health Resources, LLC (“Encore”) (Doc. 32). Plaintiff opposed the Motion to Dismiss of the Walker Defendants and the Motion to Dismiss of Encore but asked for an opportunity to amend the Complaint (Docs. 21 and 37). The Walker Defendants replied in support of their Motion (Doc. 31) and Encore did as well (Doc. 40). For the following reasons, the Court **GRANTS** Plaintiff leave to amend the Complaint and holds consideration of the Motions to Dismiss in abeyance. If Plaintiff chooses to file an amended Complaint, the Motions will be moot.

I. BACKGROUND

This case arises out of Plaintiff’s employment with the Walker Defendants as an “ATE Go-Live Support Consultant.” (Doc. 1, Compl. at ¶6). Plaintiff worked at health institutions nationwide to implement and help administer new computer health systems. (*Id.* at ¶ 13). Plaintiff alleges that Encore managed her day to day activities. (*Id.* at ¶ 8). Plaintiff also brings

claims against two individuals, Tiffany Walker, the owner and CEO of the Walker entities, and Gregory Walker, owner and Senior Managing Principal of the Walker entities.

Plaintiff alleges that she worked more than 40 hours per week and was either not paid for the time, or was paid her regular rate of pay for the overtime hours. (*Id.* at ¶¶ 17–18). Plaintiff also alleges that only hours billed to the client were paid even though she was required to work unpaid, non-billable work. (*Id.* at ¶ 19). Plaintiff alleges that she “routinely” worked more than 40 hours per week and that Defendants knew she was not properly compensated but continued to require Plaintiff to work more than forty hours per week. (*Id.* at ¶ 27).

Plaintiff’s Complaint alleges violations of the Fair Labor Standards Act (“FLSA”) and the Ohio Minimum Fair Wage Standards Act (“OMFWSA”). The Walker Defendants and the Encore Defendants moved to dismiss all of Plaintiff’s claims because they allege her Complaint lacked sufficient factual allegations. Plaintiff also asked for leave to amend the Complaint should the Court find the Complaint wanting.

II. DISCUSSION

Before reaching the merits of the Motions to Dismiss, the Court first addresses Plaintiff’s apparent attempt to obtain leave to amend the Complaint. The form of Plaintiff’s request is unusual and improper under the Federal Rules. It also improperly asks for an advisory opinion from the Court. The Court agrees with the Walker Defendants that Plaintiff’s request should not be considered a Motion for Leave to Amend and therefore, should be denied. However, leave to amend the Complaint need not necessarily be obtained in a motion from the Plaintiff. This Court prefers to allow cases to reach the merits rather than through dismissal at this early stage. Accordingly, this Court will *sua sponte* provide leave to Plaintiff to amend the Complaint to cure whatever deficiencies Plaintiff believes exist. However, the Court notes that any future motions

requesting leave to amend must meet the requirements of Rule 7(b) by stating “with particularity the grounds for seeking the order.” Plaintiff shall have fourteen days to file an amended complaint.

Based on the foregoing, the Court **GRANTS** Plaintiff leave to amend the Complaint within **14 days** of the date of this Order.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT